

FEB - 3 2014

LODGED _____ REC'D _____
PAID _____ DOCKETED _____

1 Mark Edward Berry
2 1502 NW Studebaker Dr.
3 Prineville OR 97754
4 541-410-2318
5 In Pro Per

6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF OREGON
8

9 In re) CHAPTER 7 BANKRUPTCY CASE
10) NO. 13-37862-rld7
11 MARK EDWARD BERRY,)
12)
13 Plaintiff,) ADV. NO.
14)
15 vs.)
16)
17 ASPIRE/DEPT OF EDUCATION,)
18)
19 Defendant)
20

21
22
23 COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT
24 PURSUANT TO 11 U.S.C. §523(a)(8)
25

26 Mark Edward Berry, Debtor and Plaintiff in the above captioned adversary proceeding, represents
27 as follows:
28

1. Mark Edward Berry filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on December 23, 2013. Michael Batlan is the duly appointed Chapter 7 trustee. This complaint seeks to determine the dischargeability of a student loan as it presents an undue hardship for the debtor and his dependents.

2. One of the unsecured debts owing by the Debtor and listed on Schedule F—Creditors Holding Unsecured Nonpriority Claims-- is a student loan owing to United States Department of Education/Aspire.

3. This loan was incurred to pay expenses at ITT Tech. of Portland OR, for a BS in Automation Engineering. Degree was not obtained.

JURISDICTION

4. Defendant United States Department of Education/Aspire maintains its Direct Loan Servicing Center in Atlanta, Georgia.

5. This Court has jurisdiction over this action under 28 U.S.C. § 1334. The District Court has generally referred these matters to the Bankruptcy Court for hearing pursuant to 28 U.S.C. § 157(a). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(I). This adversary complaint is brought pursuant to 11 U.S.C. § 523(a)(8).

FIRST CAUSE OF ACTION [11 U.S.C. § 523(a)(8)]

6. Plaintiff is indebted to the Defendant in the approximate sum of \$48,500.00 for education loans made by Defendant to Plaintiff.

7. Requiring Plaintiff to repay these debts will impose undue hardship on the Debtor and the Debtors dependants as contemplated under 11 U.S.C. § 523(a)(8).

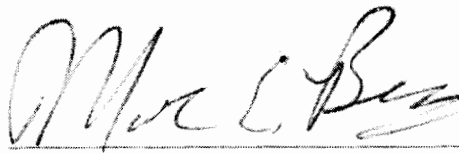
8. Based upon the Plaintiff's current income and expenses, the Plaintiff cannot maintain a minimal living standard if forced to repay the loan. Plaintiff has had to defer these loans several times due to income restraints and general daily living expenses. Plaintiff is 45 years old and apparently at the top of his professional pay scale in the area which he lives. Plaintiff has not received a significant pay raise in the last six years, only cost of living. It is unlikely Plaintiff will ever be able to pay this loan in his lifetime.

1 repayment period and he has made a good faith effort to repay his debt.

2 9. The Debtor has filed for bankruptcy for reasons other than just to discharge his student
3 loan.

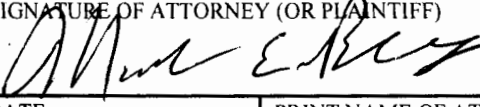
4 WHEREFORE, the debtor asks this court to enter an
5 order declaring the student loans debt to be dischargeable.

6 Date: January 29, 2014

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11 Plaintiff: MARK EDWARD BERRY
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B104 (10/06) ADVERSARY PROCEEDING COVER SHEET (Instructions on Page 2)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Mark Berry 1502 NW Studebaker Dr Prineville OR 97754		DEFENDANTS ASPIRE/DEPT OF EDUCATION PO BOX 530308 ATLANTA GA 30353-0308		
ATTORNEYS (Firm Name, Address, and Telephone No.) NONE		ATTORNEYS (If Known) IN PRO PER		
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Other		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Other		
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Plaintiff seeks discharge-ability of debt pursuant to 11 U.S.C.A. §523(a)(8).				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) - Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection/revocation of discharge - §727(c), (d), (e) FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability §523(a)(6), willful and malicious injury <input checked="" type="checkbox"/> 63-Dischargeability §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability §523(a)(15), divorce/sep property settlement/decreed <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) - Injunctive Relief <input type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) - Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) - Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) - Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 USC §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) - Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection/revocation of discharge - §727(c), (d), (e) FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1), (14), (14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability §523(a)(6), willful and malicious injury <input checked="" type="checkbox"/> 63-Dischargeability §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability §523(a)(15), divorce/sep property settlement/decreed <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) - Injunctive Relief <input type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) - Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) - Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) - Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 USC §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23		
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$48,500.00		
Other Relief Sought				

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR Mark Edward Berry		BANKRUPTCY CASE NO. 13-37862-rld7	
DISTRICT IN WHICH CASE IS PENDING Oregon	DIVISIONAL OFFICE		NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the adversary proceeding is filed electronically through the court's ECF system. When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the **Bankruptcy Rules**, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Parties. Give the names of the parties to the adversary proceeding exactly as they appear on the complaint. Give the names and addresses of the attorneys if known.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.